

111TH CONGRESS
1ST SESSION

H. R. 3987

To amend titles XI and XVIII of the Social Security Act to promote the use of health information technology to better coordinate health care.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2009

Mr. BLUNT (for himself, Mr. BARTON of Texas, Mr. BURGESS, Mrs. BLACKBURN, and Mr. GINGREY of Georgia) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend titles XI and XVIII of the Social Security Act to promote the use of health information technology to better coordinate health care.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. SAFE HARBORS TO ANTIKICKBACK CIVIL PEN-**
4 **ALTIES AND CRIMINAL PENALTIES FOR PRO-**
5 **VISION OF HEALTH INFORMATION TECH-**
6 **NOLOGY AND TRAINING SERVICES.**

7 (a) FOR CIVIL PENALTIES.—Section 1128A of the
8 Social Security Act (42 U.S.C. 1320a–7a) is amended—

1 (1) in subsection (b), by adding at the end the
2 following new paragraph:

3 “(4) For purposes of this subsection, induce-
4 ments to reduce or limit services described in para-
5 graph (1) shall not include the practical or other ad-
6 vantages resulting from health information tech-
7 nology or related installation, maintenance, support,
8 or training services.”; and

9 (2) in subsection (i), by adding at the end the
10 following new paragraph:

11 “(8) The term ‘health information technology’
12 means hardware, software, license, right, intellectual
13 property, equipment, or other information tech-
14 nology (including new versions, upgrades, and
15 connectivity) designed or provided primarily for the
16 electronic creation, maintenance, or exchange of
17 health information to better coordinate care or im-
18 prove health care quality, efficiency, or research.”.

19 (b) FOR CRIMINAL PENALTIES.—Section 1128B of
20 such Act (42 U.S.C. 1320a–7b) is amended—

21 (1) in subsection (b)(3)—

22 (A) in subparagraph (G), by striking
23 “and” at the end;

24 (B) in the subparagraph (H) added by sec-
25 tion 237(d) of the Medicare Prescription Drug,

Improvement, and Modernization Act of 2003
(Public Law 108–173; 117 Stat. 2213)—

(i) by moving such subparagraph 2
ems to the left; and

(ii) by striking the period at the end
and inserting a semicolon;

(C) in the subparagraph (H) added by sec-
tion 431(a) of such Act (117 Stat. 2287)—

(i) by redesignating such subpara-
graph as subparagraph (I);

(ii) by moving such subparagraph 2
ems to the left; and

(iii) by striking the period at the end
and inserting “; and”; and

(D) by adding at the end the following new
subparagraph:

“(J) any nonmonetary remuneration (in
the form of health information technology, as
defined in section 1128A(i)(8), or related instal-
lation, maintenance, support, or training serv-
ices) made to a person by a specified entity (as
defined in subsection (g)) if—

“(i) the provision of such remunera-
tion is without an agreement between the
parties or legal condition that—

1 “(I) limits or restricts the use of
2 the health information technology to
3 services provided by the physician to
4 individuals receiving services at the
5 specified entity;

6 “(II) limits or restricts the use of
7 the health information technology in
8 conjunction with other health informa-
9 tion technology; or

10 “(III) conditions the provision of
11 such remuneration on the referral of
12 patients or business to the specified
13 entity;

14 “(ii) such remuneration is arranged
15 for in a written agreement that is signed
16 by the parties involved (or their represent-
17 atives) and that specifies the remuneration
18 solicited or received (or offered or paid)
19 and states that the provision of such remu-
20 nation is made for the primary purpose
21 of better coordination of care or improve-
22 ment of health quality, efficiency, or re-
23 search; and

24 “(iii) the specified entity providing the
25 remuneration (or a representative of such

1 entity) has not taken any action to disable
2 any basic feature of any hardware or soft-
3 ware component of such remuneration that
4 would permit interoperability.”; and

5 (2) by adding at the end the following new sub-
6 section:

7 “(g) SPECIFIED ENTITY DEFINED.—For purposes of
8 subsection (b)(3)(J), the term ‘specified entity’ means an
9 entity that is a hospital, group practice, prescription drug
10 plan sponsor, a Medicare Advantage organization, or any
11 other such entity specified by the Secretary, considering
12 the goals and objectives of this section, as well as the goals
13 to better coordinate the delivery of health care and to pro-
14 mote the adoption and use of health information tech-
15 nology.”.

16 (c) EFFECTIVE DATE AND EFFECT ON STATE
17 LAWS.—

18 (1) EFFECTIVE DATE.—The amendments made
19 by subsections (a) and (b) shall take effect on the
20 date that is 120 days after the date of the enact-
21 ment of this Act.

22 (2) PREEMPTION OF STATE LAWS.—No State
23 (as defined in section 1101(a) of the Social Security
24 Act (42 U.S.C. 1301(a)) for purposes of title XI of
25 such Act) shall have in effect a State law that im-

1 poses a criminal or civil penalty for a transaction de-
2 scribed in section 1128A(b)(4) or section
3 1128B(b)(3)(J) of such Act, as added by subsections
4 (a)(1) and (b), respectively, if the conditions de-
5 scribed in the respective provision, with respect to
6 such transaction, are met.

7 (d) STUDY AND REPORT TO ASSESS EFFECT OF
8 SAFE HARBORS ON HEALTH SYSTEM.—

9 (1) IN GENERAL.—The Secretary of Health and
10 Human Services shall conduct a study to determine
11 the impact of each of the safe harbors described in
12 paragraph (3). In particular, the study shall examine
13 the following:

14 (A) The effectiveness of each safe harbor
15 in increasing the adoption of health information
16 technology.

17 (B) The types of health information tech-
18 nology provided under each safe harbor.

19 (C) The extent to which the financial or
20 other business relationships between providers
21 under each safe harbor have changed as a re-
22 sult of the safe harbor in a way that adversely
23 affects or benefits the health care system or
24 choices available to consumers.

1 (D) The impact of the adoption of health
 2 information technology on health care quality,
 3 cost, and access under each safe harbor.

4 (2) REPORT.—Not later than three years after
 5 the effective date described in subsection (c)(1), the
 6 Secretary of Health and Human Services shall sub-
 7 mit to Congress a report on the study under para-
 8 graph (1).

9 (3) SAFE HARBORS DESCRIBED.—For purposes
 10 of paragraphs (1) and (2), the safe harbors de-
 11 scribed in this paragraph are—

12 (A) the safe harbor under section
 13 1128A(b)(4) of such Act (42 U.S.C. 1320a-
 14 7a(b)(4)), as added by subsection (a)(1); and

15 (B) the safe harbor under section
 16 1128B(b)(3)(J) of such Act (42 U.S.C. 1320a-
 17 7b(b)(3)(J)), as added by subsection (b).

18 **SEC. 2. EXCEPTION TO LIMITATION ON CERTAIN PHYSI-**
 19 **CIAN REFERRALS (UNDER STARK) FOR PRO-**
 20 **VISION OF HEALTH INFORMATION TECH-**
 21 **NOLOGY AND TRAINING SERVICES TO**
 22 **HEALTH CARE PROFESSIONALS.**

23 (a) IN GENERAL.—Section 1877(b) of the Social Se-
 24 curity Act (42 U.S.C. 1395nn(b)) is amended by adding
 25 at the end the following new paragraph:

1 “(6) INFORMATION TECHNOLOGY AND TRAIN-
2 ING SERVICES.—

3 “(A) IN GENERAL.—Any nonmonetary re-
4 muneration (in the form of health information
5 technology or related installation, maintenance,
6 support or training services) made by a speci-
7 fied entity to a physician if—

8 “(i) the provision of such remunera-
9 tion is without an agreement between the
10 parties or legal condition that—

11 “(I) limits or restricts the use of
12 the health information technology to
13 services provided by the physician to
14 individuals receiving services at the
15 specified entity;

16 “(II) limits or restricts the use of
17 the health information technology in
18 conjunction with other health informa-
19 tion technology; or

20 “(III) conditions the provision of
21 such remuneration on the referral of
22 patients or business to the specified
23 entity;

24 “(ii) such remuneration is arranged
25 for in a written agreement that is signed

1 by the parties involved (or their represent-
2 atives) and that specifies the remuneration
3 made and states that the provision of such
4 remuneration is made for the primary pur-
5 pose of better coordination of care or im-
6 provement of health quality, efficiency, or
7 research; and

8 “(iii) the specified entity (or a rep-
9 resentative of such entity) has not taken
10 any action to disable any basic feature of
11 any hardware or software component of
12 such remuneration that would permit
13 interoperability.

14 “(B) HEALTH INFORMATION TECHNOLOGY
15 DEFINED.—For purposes of this paragraph, the
16 term ‘health information technology’ means
17 hardware, software, license, right, intellectual
18 property, equipment, or other information tech-
19 nology (including new versions, upgrades, and
20 connectivity) designed or provided primarily for
21 the electronic creation, maintenance, or ex-
22 change of health information to better coordi-
23 nate care or improve health care quality, effi-
24 ciency, or research.

1 “(C) SPECIFIED ENTITY DEFINED.—For
2 purposes of this paragraph, the term ‘specified
3 entity’ means an entity that is a hospital, group
4 practice, prescription drug plan sponsor, a
5 Medicare Advantage organization, or any other
6 such entity specified by the Secretary, consid-
7 ering the goals and objectives of this section, as
8 well as the goals to better coordinate the deliv-
9 ery of health care and to promote the adoption
10 and use of health information technology.”.

11 (b) EFFECTIVE DATE; EFFECT ON STATE LAWS.—

12 (1) EFFECTIVE DATE.—The amendment made
13 by subsection (a) shall take effect on the date that
14 is 120 days after the date of the enactment of this
15 Act.

16 (2) PREEMPTION OF STATE LAWS.—No State
17 (as defined in section 1101(a) of the Social Security
18 Act (42 U.S.C. 1301(a)) for purposes of title XI of
19 such Act) shall have in effect a State law that im-
20 poses a criminal or civil penalty for a transaction de-
21 scribed in section 1877(b)(6) of such Act, as added
22 by subsection (a), if the conditions described in such
23 section, with respect to such transaction, are met.

24 (c) STUDY AND REPORT TO ASSESS EFFECT OF EX-
25 CEPTION ON HEALTH SYSTEM.—

1 (1) IN GENERAL.—The Secretary of Health and
2 Human Services shall conduct a study to determine
3 the impact of the exception under section 1877(b)(6)
4 of such Act (42 U.S.C. 1395nn(b)(6)), as added by
5 subsection (a). In particular, the study shall examine
6 the following:

7 (A) The effectiveness of the exception in
8 increasing the adoption of health information
9 technology.

10 (B) The types of health information tech-
11 nology provided under the exception.

12 (C) The extent to which the financial or
13 other business relationships between providers
14 under the exception have changed as a result of
15 the exception in a way that adversely affects or
16 benefits the health care system or choices avail-
17 able to consumers.

18 (D) The impact of the adoption of health
19 information technology on health care quality,
20 cost, and access under the exception.

21 (2) REPORT.—Not later than three years after
22 the effective date described in subsection (b)(1), the
23 Secretary of Health and Human Services shall sub-
24 mit to Congress a report on the study under para-
25 graph (1).

1 **SEC. 3. RULES OF CONSTRUCTION REGARDING USE OF**
2 **CONSORTIA.**

3 (a) APPLICATION TO SAFE HARBOR FROM CRIMINAL
4 PENALTIES.—Section 1128B(b)(3) of the Social Security
5 Act (42 U.S.C. 1320a–7b(b)(3)) is amended by adding
6 after and below subparagraph (J), as added by section
7 1(b)(1), the following: “For purposes of subparagraph (J),
8 nothing in such subparagraph shall be construed as pre-
9 venting a specified entity, consistent with the specific re-
10 quirements of such subparagraph, from forming a consor-
11 tium composed of health care providers, payers, employ-
12 ers, and other interested entities to collectively purchase
13 and donate health information technology, or from offer-
14 ing health care providers a choice of health information
15 technology products in order to take into account the vary-
16 ing needs of such providers receiving such products.”.

17 (b) APPLICATION TO STARK EXCEPTION.—Para-
18 graph (6) of section 1877(b) of the Social Security Act
19 (42 U.S.C. 1395nn(b)), as added by section 2(a), is
20 amended by adding at the end the following new subpara-
21 graph:

22 “(D) RULE OF CONSTRUCTION.—For pur-
23 poses of subparagraph (A), nothing in such
24 subparagraph shall be construed as preventing
25 a specified entity, consistent with the specific
26 requirements of such subparagraph, from—

1 “(i) forming a consortium composed
2 of health care providers, payers, employers,
3 and other interested entities to collectively
4 purchase and donate health information
5 technology; or

6 “(ii) offering health care providers a
7 choice of health information technology
8 products in order to take into account the
9 varying needs of such providers receiving
10 such products.”.

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